

STATE TAX COMMISSION

of

for refund of franchise tax
under Article 9-A of the tax
law for 1968

It is hereby found:

(3) Avion (now P.A.E.I.Co.) was incorporated in Delaware on February 23, 1966 and was engaged in the manufacture of electronics. It filed New York State franchise tax returns under Article 9-A for the years 1966 through 1970. Its return for 1968 reflected interest of \$200,801 to its parent, of which 90% or \$180,721 was added back by Avion on form CT-3 at Schedule B, Item 3.

Federal taxable loss of \$4,311,167 was reported at Item 1.

General Signal Corporation treated the interest income from Avion as business income on its original return for 1968 and as investment income on its amended return for that year.

(4) Based on a field audit examination conducted by its Buffalo District office on Avion and General Signal Corporation, the Corporation Tax Bureau determined that Avion was not subject to New York State franchise tax. Credits were issued to that corporation for the taxes paid for the years 1966 through 1970, and applied against added taxes asserted against General Signal Corporation.

(5) The Corporation Tax Bureau determined that the \$3,459,394 worthless notes receivable from Avion was not a proper deduction in computing entire net income of General Signal Corporation. Based on the field audit examination, a statement of tax reduction was issued for 1968 indicating an overassessment of tax in the amount of \$18,316.00, which was applied as a credit against a notice of deficiency for 1969. The only item in dispute is the disallowance of the deduction of \$3,459,394.

(6) Section 208 of the tax law reads in part:

"3. The term 'subsidiary' means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;

"4. The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries . . . on which interest is not claimed and deducted by the subsidiary for purposes of taxation under articles nine-a, nine-b, or nine-c . . ."

Section 208.9 of the tax law reads in part:

"(a) Entire net income shall not include:

"(1) Income, gains and losses from subsidiary capital . . ."

The State Tax Commission hereby


DECIDES:


(A) The election in Section 208.4 is applicable only in those cases where the subsidiary is subject to New York State franchise tax and files a return claiming a deduction for interest paid to its parent. Since Avion was not taxable, it could not make a valid election. The amount of \$3,459,394 representing worthless notes receivable from Avion is therefore subsidiary capital, and a deduction for such loss cannot be claimed pursuant to Section 208.9(a)(1) of the tax law.

(B) The credit for overassessment of \$18,316.00 indicated in (5) is affirmed and taxpayer's petition for a larger credit is denied.

Dated: Albany, New York
this 24th day of October 1974.

STATE TAX COMMISSION


President


Commissioner


Commissioner